

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: December 1, 2008:

The Regular Meeting of the Board of City Commissioners of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 5:00 o'clock p.m., Monday, December 1, 2008.

The Commissioners present or absent were as shown following:

Present: Piepkorn, Williams (via conference call), Wimmer, Walaker.

Absent: Mahoney.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Wimmer moved the Order of the Agenda be approved.

Second by Piepkorn. All the Commissioners present voted aye and the motion was declared carried.

Minutes Approved:

Commissioner Piepkorn moved that the Minutes of the Regular Meeting of the Board held on November 17, 2008 be approved as read.

Second by Wimmer. All the Commissioners present voted aye and the motion was declared carried.

Consent Agenda Approved:

Commissioner Wimmer moved the Consent Agenda be approved as follows:

- a. Receive and file an Ordinance Amending Section 8-1606 of Article 8-16 of Chapter 8 of the Fargo Municipal Code Relating to Parking Tickets.
- b. Addendum #2 to the City's contract with Duncan Solutions for citation management services.
- c. Memorandum of Agreement with the Cass County Commission and the Cass County Social Services Board granting \$9,000 to assist with operations at the Gladys Ray Shelter.
- d. Fiscal services agreement with Red River Regional Dispatch Center effective January 1, 2009.
- e. Agreement with Cass County for hazardous spill containment and technical rescue.

- f. Fire Department budget adjustment in the amount of \$290,000 for Self-Contained Breathing Apparatus (Assistance to Firefighters Grant Award #EMW-2008-FO-04210).
- g. Department budget adjustment in the amount of \$9,330 and contract with the North Dakota Department of Health relating to family planning services (CFDA #93.217 and 93.116).
- h. Grant Amendment with the North Dakota Department of Health to increase funding to the school component of the Community Health Grant at Hope High School in the amount of \$1,299 (Tobacco Prevention and Control).
- i. Police Department budget adjustment in the amount of \$9,000 and grant agreement with the ND Highway Patrol for enforcing underage drinking laws (CFDA #16.727).
- j. Contract for bailiff services for 2009.
- k. Appoint Murray J. Ridler as a special police officer for NDSU.
- l. Applications for 5-year property tax exemptions for improvements made to buildings:
 - (1) Matthew and Laura Devik, 726 7th Street North.
 - (2) Todd Kankelfritz, 1545 7th Street South.
- m. Site authorization for the Fargo Moorhead Curling Club for raffles at the Curling Club from 11/17/08 to 6/30/09.
- n. Name change of the liquor license held by Brent C. Olson d/b/a TBD to Brent C. Olson, d/b/a Norman's Prime Steaks and Seafood.
- o. Bid award concurrence for Project No. 5725 to Rice Lake Construction Group in the amount of \$6,963,000, Grant's Mechanical Inc. in the amount of \$899,800 and JDP Electrical, Inc. in the amount of \$1,357,992.
- p. Purchase Agreements and Temporary Construction Easements for the following:
 - (1) Arnold W. Larson and Charmeon Larson for Improvement District No. 5656.
 - (2) Leon and Karen Backer for Improvement District No. 5729.
 - (3) Arnold W. Larson and Charmeon Larson for Improvement District No. 5799.
 - (4) County 20 Storage & Transfer, Inc. for Improvement District No. 5799.
- q. Purchase Agreement with Matrix Properties Corporation for Improvement District No. 5803.

- r. Relinquishment of Easement in Lot 1, Block 1, 47th Street North Addition and Lot 1, Block 1, Fayland Industrial First Addition.
- s. Engineering Services contract with Moore Engineering for Improvement District No. 5530-5.
- t. Engineering Services contract with KLJ in the amount of \$71,000 for Improvement District No. 5601.
- u. Contract Amendments for the following Projects:
 - (1) Houston Engineering in the amount of \$46,500 for No. 5574.
 - (2) Merrick & Company in the amount of \$16,393.99 for No. 5768.
- v. Contract Amendments for the following Improvement Districts:
 - (1) Moore Engineering in the amount of \$59,500 for No. 5073-1.
 - (2) Houston Engineering in the amount of \$28,116 for No. 5073-5.
 - (3) URS Corp. in the amount of \$179,370 for No. 5073-7.
 - (4) KLJ in the amount of \$36,000 for No. 5073-8.
 - (5) Ulteig Engineers in the amount of \$192,590 for No. 5073-9.
- w. Final Balancing Change Order No. 1 for an increase of \$792.68 for Project No. 5647.
- x. Bills in the amount of \$5,533,433.66

Second by Piepkorn. On call of the roll Commissioners Wimmer, Piepkorn, Williams and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Change Order No. 1 and Contract Time Extension for Improvement District No. 5746

Approved:

Commissioner Wimmer moved approval of Change Order No. 1 for an increase of \$50,929.45 and a Contract Time Extension to December 10, 2008 for Improvement District No. 5746.

Second by Piepkorn. On call of the roll Commissioners Wimmer, Piepkorn, Williams and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Change Order No. 1 for Improvement District No. 5845 Approved:

Commissioner Wimmer moved approval of Change Order No. 1 for an increase of \$12,017.55 for Improvement District No. 5845.

Second by Piepkorn. On call of the roll Commissioners Wimmer, Piepkorn, Williams and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Final Balancing Change Order No. 1 for Improvement District No. 5781 Approved:

Commissioner Wimmer moved approval of Final Balancing Change Order No. 1 for an increase of \$35,732.16 for Improvement District No. 5781.

Second by Piepkorn. On call of the roll Commissioners Wimmer, Piepkorn, Williams and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Final Balancing Change Order No. 1 for Improvement District No. 5668 Approved:

Commissioner Wimmer moved approval of Final Balancing Change Order No. 1 for an increase of \$159,143.61 for Improvement District No. 5668.

Second by Piepkorn. On call of the roll Commissioners Wimmer, Piepkorn, Williams and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Appointments to the Historic Preservation Commission:

The Board received a communication from Mayor Walaker recommending that Peter Moynihan and David Shultz be reappointed and John Bye be appointed to the Historic Preservation Commission.

Commissioner Wimmer moved the Board approve and confirm the reappointment of Peter Moynihan and David Shultz and the appointment of John Bye to the Historic Preservation Commission for the terms ending October 31, 2011.

Second by Piepkorn. On call of the roll Commissioners Wimmer, Piepkorn, Mahoney and Walaker voted aye.

Absent and not voting: Commissioner Mahoney

The motion was declared carried.

Chuck Carney Appointed to the City Hall-Auditorium Commission:

The Board received a communication from Mayor Walaker recommending that Chuck Carney be appointed to the City Hall-Auditorium Commission to fill the unexpired term of Charline King who resigned.

Commissioner Piepkorn moved the appointment of Chuck Carney to the City Hall-Auditorium Commission for the term ending January 1, 2010 be approved.

Second by Wimmer. On call of the roll Commissioners Piepkorn, Wimmer, Williams and Walaker voted aye.

Absent and not voting: Commissioner Mahoney

The motion was declared carried.

Letter of Credit Policy Changed to a Flat 50% of the Engineer's Estimate of Project Cost Effective January 1, 2009:

The Board received a communication from City Auditor Steve Sprague stating the City of Fargo requires a letter of credit to provide security for unpaid special assessments in areas of new development. He said the policy has been in place for more than 20 years with the letter of credit capped at \$250,000. In April of 2006, he stated, the Finance Committee adopted a policy of providing for a letter of credit equal to 30% of the first \$1,000,000 and 15% of the costs in excess of \$1,000,000 on a development by development basis. In January 2008, he said, the percentage was

raised to a flat 30% of the engineer's estimate of the cost of the project. Mr. Sprague said at the September 17, 2008 meeting the Finance Committee approved changing the policy to a flat 50% of the engineer's estimate of the cost of the project. He said the City's exposure to risk of loss has increased in the last year with the change in market conditions and this change will provide the City with additional levels of security.

Finance Director Kent Costin stated, due to the size and magnitude of the projects in September 2008 the Finance Committee looked at increasing the letter of credit to 50%. He said this would bring the City of Fargo in line with West Fargo.

(Commissioner Mahoney present)

In response to a question from Mayor Walaker, Finance Director Kent Costin said he talked with Moorhead and they use the same concept of a letter of credit but are at 30%.

Commissioner Piepkorn said larger developments would probably not be impacted but he questioned the affect on the smaller developers with the increase. He said now is not a good time with the current economic situation but the increase could be revisited in the future.

City Administrator Pat Zavoral said the City got quite a bit of land back in the 1980's and was billed for the infrastructure. He said it is not the intent for the City to be in the development business and the increase from 30% to 50% would help prevent this from occurring.

At 5:15 p.m., the time advertised for public hearings, the Board deferred additional discussion on this item until after the hearings.

Application to Transfer the Alcoholic Beverage License from Brinker International Corporation d/b/a Chili's Grill and Bar to ERJ Dining IV, LLC d/b/a Chili's Grill and Bar
Approved:

A Hearing had been set for this day and hour on an application to transfer the Class "FA" Alcoholic Beverage License from Brinker International Corporation d/b/a Chili's Grill and Bar at 4000 13th Avenue South to ERJ Dining IV, LLC d/b/a Chili's Grill and Bar notice of which had been duly published in the official newspaper for the City of Fargo.

No written protest or objection to the granting of the application has been received or filed in the office of the City Auditor, and said application has been approved by the Police Department as to the character of the applicant.

The Board determined that no person is present at this Hearing to protest or offer objection to the granting of the application.

Commissioner Piepkorn moved the application be approved.

Second by Wimmer. On call of the roll Commissioners Piepkorn, Wimmer, Mahoney, Williams and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Parcels of Land in Maple Valley Addition Rezoned (6007-6293 35th Street South, Odd Numbers Only):

At a Hearing held on November 12, 2008 the Fargo Planning Commission recommended approval of a change in zoning from SR-3, Single-Dwelling to SR-4,

Single-Dwelling on Lots 1 through 20 and Lots 23 through 36, Block 6, Maple Valley Addition.

The City Auditor's Office published a Notice of Hearing stating this is the time and date set for said Hearing at which time all interested persons could appear and would be heard.

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, All legal requirements in connection with the above-described request for rezoning have been complied with; and

WHEREAS, There have been no written or verbal protests to the request for rezoning and no one is present to protest thereto.

NOW, THEREFORE, BE IT RESOLVED That the findings of staff be accepted and the rezoning be approved on the basis that the proposal satisfactorily complies with the Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.

Second by Piepkorn. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Piepkorn, Williams, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Maple Valley Addition to the City of Fargo:

Commissioner Wimmer moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Rezoning Certain Parcels of Land Lying in Maple Valley Addition to the City of Fargo be placed on first reading.

Second by Piepkorn. On call of the roll Commissioners Wimmer, Piepkorn, Williams, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Hearing on a Petition for a Zoning Change on Certain Parcels of Land in Laurence Yunker 1st Addition Continued to December 15, 2008 (2900 Broadway North):

At a Hearing held on November 12, 2008 the Fargo Planning Commission recommended approval of a change in zoning from SR-2, Single-Dwelling to LC, Limited Commercial on Block 4, Laurence Yunker 1st Addition.

The City Auditor's Office published a Notice of Hearing stating this is the time and date set for said Hearing at which time all interested persons could appear and would be heard.

Senior Planner Jim Hinderaker said the primary reason for the rezoning is to make the current property compatible to adjacent zones, as the current zoning is too restrictive for future building plans.

In response to a question from Commissioner Wimmer regarding building plans and parking, Mr. Hinderaker said the church will be building an addition but the dimensional changes will not affect the parking requirement. He said the staff report indicates the addition would be going east and up to 10 feet from the property line.

The church has not started construction, he stated, so a two week delay would not affect the church's plans if the Commission would like more information.

Commissioner Wimmer moved the Hearing be continued to 5:15 p.m. Monday, December 15, 2008.

Second by Piepkorn. On call of the roll Commissioners Wimmer, Piepkorn, Mahoney, Williams and Walaker voted aye.

No Commissioner being absent and none voting aye, the motion was declared carried.

Parcels of Land in Erskines Addition Rezoned (1117 and 1155 13th Avenue South):

At a Hearing held on November 12, 2008 the Fargo Planning Commission recommended approval of a change in zoning from NC, Neighborhood Commercial to LC, Limited Commercial with a Conditional Overlay on the south 51 feet of Lots 1, 2, 3, 4 and 5; the south 51 feet of the south 101 feet of the west 8.4 feet of Lot 6; the south 70 feet of the east 16.6 feet of Lot 6; all of Lot 7; and the west 8.4 feet of Lot 8, Block SS of Erskines Addition.

The City Auditor's Office published a Notice of Hearing stating October 20, 2008 was the time and date set for said Hearing at which time all interested persons could appear and would be heard.

At the October 20, 2008 meeting the Hearing was continued to November 17, 2008.

At the November 17, 2008 meeting the Hearing was continued to this day and hour.

Senior Planner Jim Hinderaker stated the Hearing was continued two weeks in order to allow staff time to discuss the disclosed sign requirements. He said the petitioner has agreed to go no wider than 8 feet and to remove other signage on the property if zoning is changed. Limited Commercial with a Conditional Overlay, he said, will allow for the sign to be placed in relation to the property line and the obstruction.

Steve Stremick, 1155 13th Avenue South, said the neighbors were not opposed to the proposed sign and several signed a letter of no objection.

There was discussion regarding sign allowances between Neighborhood Commercial and Limited Commercial with a Conditional Overlay.

Commissioner Mahoney offered the following Resolution and moved its adoption:

WHEREAS, All legal requirements in connection with the above-described request for rezoning have been complied with; and

WHEREAS, There have been no written or verbal protests to the request for rezoning and no one is present to protest thereto.

NOW, THEREFORE, BE IT RESOLVED, That the findings and recommendations of staff and the Planning Commission be accepted and the rezoning be approved with the following Conditional Overlay on the basis that the proposal complies with the Comprehensive Plan/Area Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC have been met:

The uses and standards of the "LC", Limited Commercial, District shall be limited to the Uses, Dimensional Standards and Additional Standards of an "NC", Neighborhood Commercial, District as set forth in Section 20-0209 of the Land

Development Code, except subparagraphs D.6 and D.7 thereof, and further subject to the following:

1. Freestanding signs shall be limited to monument signs of a height no greater than 8-1/2 feet, measured from the ground level, and of a width no greater than 8 feet. A monument sign is defined as a sign in which the lowest portion of the sign itself, not including any pole or support, has its base at ground level, said ground level being at grade with the rest of the property.
2. The total amount of signage shall not exceed 150 square feet.
3. The provisions of the Fargo Sign Code (as authorized pursuant to Section 25-0307 of the Fargo Municipal Code) for an "LC", Limited Commercial, zoning district shall apply.

Second by Piepkorn.

Commissioners Williams and Wimmer said they will not support a zoning change because of the sign.

Commissioner Mahoney said he will support the rezoning request because Planning staff and the Planning Commission have worked with the petitioner on reaching acceptable conditions.

On the vote being taken on the question of the adoption of the Resolution Commissioners Mahoney, Piepkorn and Walaker voted aye.

Commissioners Wimmer and Williams voted nay.

The Resolution was adopted.

Appeal of the Board of Adjustment Decision Regarding Jurisdiction in an Appeal of a Building Permit at 1434 12th Avenue North Denied:

A Hearing had been set for this day and hour on an appeal by William Rakowski of a Board of Adjustment decision to not accept jurisdiction to hear Mr. Rakowski's appeal of a building permit issued for consideration at 1434 12th Avenue North.

Senior Planner Jim Hinderaker submitted a staff report stating that on September 2, 2008 William Rakowski, owner of the property at 1424-1426 12th Avenue North, filed an appeal of the issuance of a building permit on August 25, 2008, for property at 1434 12th Avenue North. The appeal, he said, was made by Mr. Rakowski's attorney, Jonathan Garaas. He stated the appellant contends that Building Permit No. BL20081741 should not have been issued due to insufficient parking. He said that although Mr. Garaas argued that the appeal of the building permit issuance should be heard by the Board of Adjustment, Planning staff determined that the appeal should properly be heard by the Planning Commission. On September 8, 2008, he said, staff informed Mr. Garaas that compliance with the parking requirement, and the review of the same, is part of a site plan review as governed by FMC/LDC §20-0910 and that decisions made under the site plan review process are appealable to the Planning Commission. Mr. Hinderaker said that on October 8, 2008 the Planning Commission reviewed the appeal and found, regarding the question of jurisdiction, that the appeal was properly before them and the appellant did have standing to appeal. However, he said, the Planning Commission

continued the hearing to December 10, 2008. Mr. Hinderaker said that on October 22, 2008 the Board of Adjustment reviewed the appeal and found, regarding the question of jurisdiction, that the Board of Adjustment did not have authority to review said appeal. He said the Board of Adjustment cited that the appeal is reserved to the Planning Commission and the Board of Commissioners in accordance with §20-0803(C)(2) and §20-0910(E) of the LDC.

No written protest or objection to the appeal of the Board of Adjustment decision has been received or filed in the office of the City Auditor.

The Board determined that no person is present at this Hearing to protest or offer objection thereto.

There was discussion regarding the building permit process and the rationale for the Planning Commission having jurisdiction as opposed to the Board of Adjustment.

Senior Planner Jim Hinderaker said the Planning Commission is scheduled to meet December 10, 2008 to finalize the appeal.

At 6:05 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Attorney Jonathan Garaas, representing William Rakowski, stated the appeal process is faulty due to the fact that complete documentation was not published and the Board of Adjustment did not receive any documentation at their meeting. He said the Land Development Code is the law and cannot be changed by Planning Department staff.

In response to a question from City Attorney Erik Johnson, Mr. Hinderaker said a complete building permit application was submitted by the developer and was routed to the proper departments for review.

Mr. Johnson said the sole decision to be made is whether the Board of Adjustment is the proper group to hear an appeal of the issuance of the building permit. He said staff believes that the Board of Adjustment was correct in affirming that the Planning Commission has jurisdiction.

In response to a question by Mr. Garaas regarding payment of fees and filing of a site plan, Mr. Hinderaker said the documents were submitted in acceptable form and fees for site plan review were collected by the Building Inspector.

Commissioner Mahoney moved to accept the findings and recommendation of staff, the Planning Commission and the Board of Adjustment and establish that the Board of Adjustment does not have jurisdiction to hear the Rakowski appeal on the basis that such an appeal is reserved to the Planning Commission and Board of City Commissioners in accordance with §20-0803(C)(2) and §20-0910(E) of the Land Development Code.

Second by Wimmer. On call of the roll Commissioners Mahoney, Wimmer, Piepkorn and Walaker voted aye.

Commissioner Williams voted nay.

The motion was declared carried.

Text Amendment to Article 20-0302 Planned Unit Development of the Land Development Code Approved:

A Hearing had been held by the Fargo Planning Commission on November 12, 2008 for the purpose of considering a request for a text amendment to Article 20-0302 Planned Unit Development of the Land Development Code to expand the standards currently eligible for modification and the Fargo Planning Commission at such Hearing recommended to the Board of City Commissioners that the request be approved.

The City Auditor's Office published a Notice of Hearing stating this is the time and date set for said Hearing at which time all interested persons could appear and would be heard.

There have been no written or verbal protests to the request and no one is present to protest thereto.

Senior Planner Jim Hinderaker said the Urban Plains development wants to move forward with more of a downtown feel by proposing certain changes and adding certain standards to the Planned Unit Development (PUD), i.e. Parking, Landscaping and Residential Protection Standards.

In response to a question by Commissioner Williams, Mr. Hinderaker said historically in Fargo, Planning has moved too far in one direction and this took out the opportunity for new, unique developments like Urban Plains, so there is a need to modify the PUD.

Commissioner Wimmer moved the request be approved on the basis the proposed Text Amendment complies with Section 20-0904.E (1-4) of the Land Development Code.

Second by Piepkorn. On call of the roll Commissioners Wimmer, Piepkorn, Mahoney and Walaker voted aye.

Commissioner Williams voted nay.

The motion was declared carried.

First Reading of an Ordinance Relating to Modifications for Planned Unit Development Proposals:

Commissioner Wimmer moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Amending Section 20-0302(E) of Chapter 20 of the Fargo Municipal Code (Land Development Code) Related to Eligible Modifications for Planned Unit Development Proposals be placed on first reading.

Second by Piepkorn. On call of the roll Commissioners Wimmer, Piepkorn, Mahoney and Walaker voted aye.

Commissioner Williams voted nay.

The motion was declared carried.

Letter of Credit Policy Changed to a Flat 50% of the Engineer's Estimate of Project Cost Effective January 1, 2009 (Continued):

Don Dabbert, Jr., 3116 31st Street South, said as a developer there are other issues that need to be considered besides the increase to 50%. He said there is no consideration for the decrease of risk posed to the City as the development sells so he suggested the letter of credit be reviewed on an annual basis.

President of the Home Builders Association Bill Blixt, 3524 North Elm, said they appreciate what the City has done to encourage growth but this requirement may benefit the larger developers and ultimately raise prices. Now is not the time, he said, to be increasing the percentage with tightening lines of credit.

Finance Director Kent Costin said the City is responsible in case of default on projects. Special assessments, he said, are used for bond repayment so it is important to have enough in reserve because the letters of credit would only cover a portion.

Commissioner Mahoney moved the change in the letter of credit policy to a flat 50% of the engineer's estimate of project cost effective January 1, 2009 be approved.

Second by Wimmer.

Mayor Walaker said the Finance Committee will revisit the issue of renewals on the letter of credit policy.

On call of the roll Commissioners Mahoney, Wimmer, Williams and Walaker voted aye.

Commissioner Piepkorn voted nay.

The motion was declared carried.

Purchase Agreement and Quit Claim Deed with Fred M. Hector, Jr. Approved:

The Board received a communication from Garylle B. Stewart recommending the purchase of property interests from Fred M. Hector, Jr. for acquisition of property for storm sewer purposes. He submitted a letter from Jonathan Garaas written to Engineering Tech Ben Dow which contains various conditions recommended for approval.

Commissioner Wimmer moved the Purchase Agreement and Quit Claim Deed with Fred M. Hector, Jr. for acquisition of property for storm sewer purposes be approved and that the items contained in Mr. Garaas' letter to Ben Dow dated November 21, 2008 concerning the culvert/concrete mats and flood control access agreement be agreed to.

Second by Piepkorn. On call of the roll Commissioners Wimmer, Piepkorn, Mahoney, Williams and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

City Attorney Erik Johnson announced that there is a pending litigation matter to be discussed in Executive Session, specifically the Sauby case.

Commissioner Mahoney moved the Commissioners meet in Executive Session in the River Room as authorized by NDCC, Section 44-04-19.2 to discuss said pending litigation matter.

Second by Piepkorn. All the Commissioners voted aye and the motion was declared carried.

At 6:00 p.m. the Board moved to the River Room to discuss the litigation matters in Executive Session.

Members present were: Mahoney, Piepkorn, Wimmer and Walaker.

Absent and not voting Commissioner Williams.

The Executive Session closed at 8:10 o'clock p.m. and the meeting was adjourned.

The next meeting of the Board will be held at 5:00 o'clock p.m., Monday, December 15, 2008.